

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	:	Chapter 11
	:	
SERTA SIMMONS BEDDING, LLC, et al.,	:	Case No. 23-90020 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	

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SERTA SIMMONS BEDDING, LLC, et al.,	:	
	:	
Plaintiffs and Counterclaim Defendants,	:	Adversary Proc. No. 23-09001 (DRJ)
	:	
v.	:	
	:	
AG CENTRE STREET PARTNERSHIP L.P., et al.,	:	
	:	
Defendants, Counterclaim Plaintiffs and	:	
Third-Party Plaintiffs,	:	
	:	
v.	:	
	:	
AGF FLOATING RATE INCOME FUND, et al.,	:	
Third-Party Defendants.	:	
	:	

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**DECLARATION OF THEODORE KWON**

Pursuant to 28 U.S.C. § 1746, THEODORE KWON declares as follows:

1. I am a Partner at Apollo Global Management (“Apollo”). I joined Apollo in 2015.

2. I submit this declaration in support of the Excluded Lenders’ Memorandum of Law in Opposition to Plaintiffs’ Motions for Partial Summary Judgment.

**I. Apollo’s Trading in Serta Debt from 2016–2018**

3. Funds managed by affiliates of Apollo purchased Serta First Lien Term Loans with a face value of [REDACTED] as part of Serta’s November 2016 refinancing.

4. From 2016 to 2018, Apollo, through funds managed by its affiliates, engaged in numerous trades in Serta First Lien Term Loans. The table below summarizes those trades:

Trade Date	Buy/Sell	Broker	Face Amount
10/21/2016	■	■■■■■■■■■■	■■■■■■■■■■
11/8/2016	■	■■■■■■■■■■	■■■■■■■■■■
11/14/2016	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
11/18/2016	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
11/22/2016	■	■■■■■■■■■■	■■■■■■■■■■
12/1/2016	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
12/2/2106	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
12/14/2016	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
12/19/2016	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
1/12/2017	■	■■■■■■■■■■	■■■■■■■■■■
1/23/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
1/31/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
2/1/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
2/2/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
2/14/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
2/17/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
3/13/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■
6/5/2017	■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■

Trade Date	Buy/Sell	Broker	Face Amount
6/27/2017	■	■■■■■■■■■■	■■■■■
6/30/2017	■	■■■■■■■■	■■■■■
7/7/2017	■	■■■■■■■■■■	■■■■■
7/12/2017	■	■■■■■■■■	■■■■■
7/20/2017	■	■■■■■■■■■■	■■■■■
7/24/2017	■	■■■■■■■■■■	■■■■■
7/25/2017	■	■■■■■■■■	■■■■■
8/18/2017	■	■■■■■■■■■■	■■■■■
8/28/2017	■	■■■■■■■■■■	■■■■■
8/30/2017	■	■■■■■■■■■■	■■■■■
9/5/2017	■	■■■■■■■■	■■■■■
9/7/2017	■	■■■■■■■■	■■■■■
10/16/2017	■	■■■■■■■■■■	■■■■■
10/18/2017	■	■■■■■■■■■■	■■■■■
12/8/2017	■	■■■■■■■■■■	■■■■■
1/2/2018	■	■■■■■■■■	■■■■■
1/3/2018	■	■■■■■■■■■■	■■■■■
1/5/2018	■	■■■■■■■■■■	■■■■■
1/8/2018	■	■■■■■■■■■■	■■■■■
3/6/2018	■	■■■■■■■■■■	■■■■■
3/7/2018	■	■■■■■■■■	■■■■■

Trade Date	Buy/Sell	Broker	Face Amount
3/7/2018	■	■	■
3/21/2018	■	■	■
3/22/2018	■	■	■
3/28/2018	■	■	■
5/22/2018	■	■	■
5/23/2018	■	■	■
5/23/2018	■	■	■

5. During this period, no subsidiary or affiliate of Apollo was ever blocked from buying or selling Serta First Lien Term Loans by virtue of allegedly being included on a disqualified institutions list.

## II. Apollo's Attempt to Purchase Serta Debt in 2020

6. On March 12, 2020, Apollo, through its affiliate North Star Debt Holdings L.P., executed two trades with Barclays to purchase Serta First Lien Term Loans, with an aggregate face value of \$35.3 million.

7. On March 13, 2020, Rachel Dwyer from Apollo spoke with a representative from UBS to inquire whether Apollo appeared on Serta's disqualified institutions list. The UBS employee confirmed to Ms. Dwyer that Apollo did not appear on the disqualified institutions list.

8. On March 17, 2020, an employee at IHS Markit, a third party assisting UBS with its administrative duties under the Credit Agreement, separately confirmed in a

comment posted to the trade settlement platform that “Apollo is not a disqualified institution” on Serta’s disqualified institutions list.

9. On March 18, 2020, David Cheon from Apollo emailed [REDACTED] from Serta. Mr. Cheon said that he was a “[REDACTED],” which owned a “[REDACTED].” He explained that Apollo was [REDACTED]  
[REDACTED]  
[REDACTED]” On March 23, 2020, [REDACTED] responded that “[REDACTED]  
[REDACTED]”

10. On March 20, 2020, UBS advised Apollo that it had requested Serta’s consent to start the process of settling this trade.

11. On April 14, 2020, the 15-day consent period under the Credit Agreement expired with no response from Serta. Accordingly, [REDACTED] from Barclays wrote to UBS, requesting that the trades be executed.

12. In mid-April, with the trades still pending, Rachel Dwyer had additional conversations with personnel from UBS, in which she again asked that UBS confirm whether or not Apollo was on Serta’s disqualified institutions list. Those UBS personnel confirmed several times that Apollo was not on the disqualified institutions list.

13. On April 23, 2020, Lacary Sharpe from Apollo emailed [REDACTED] from UBS, asking for updates on Serta’s consent to the trade. On April 24, 2020, [REDACTED] responded that UBS had been in touch with Serta, and: “Serta basically said the delay in approving the trade is due to COVID and signing online. They did say they will approve, however, so hopefully they can get us the signed document later today or Monday.”

14. On April 28, 2020, UBS executed the trade. Later that same day, UBS retracted the execution and said it was made in error.

15. On May 1, 2020, Serta rejected the trade. Ken Prince of Advent spoke with Matt Manin from Apollo, and said that Serta would approve the trade only if Apollo were to make a new money investment in Serta.

16. Apollo and Barclays both thereafter asked UBS for a copy of the disqualified institutions list. In response to an inquiry from Barclays, a UBS representative acknowledged that Barclays had a contractual right to the list, but said that Serta “has expressed disagreement with [UBS] about the contents of the DQ list,” and was “working on it” with Serta. UBS never provided Apollo or Barclays with a copy of the disqualified institutions list.

17. Apollo relied on its historic course of trading in Serta debt over the period 2016–2018 when deciding to enter into the March 20, 2020 trade with Barclays. Because of this historic course of trading, Apollo had no reason to believe it was on the disqualified institutions list or that its trade with Barclays would not be approved. Had Apollo known this trade would be rejected by Serta, it would have directed the funds used in this trade toward other productive investments.

18. As a result of Serta’s interference with its assignments, Apollo has been unable to settle approximately \$192 million in face amount of purchases of Serta loans. Given the restructuring transaction that is the subject of this litigation, Apollo will be unable to exit its positions without significant losses, caused by Serta’s willful misconduct. Again, had Apollo known that Serta would place it on a disqualified institutions list, it would have directed the funds used to trade in Serta debt toward other productive investments.

III. **Negotiations with Serta, Apollo, and Gamut**

19. In April and May 2020, Angelo Gordon, Apollo, and Gamut jointly negotiated a proposed transaction with Advent and Serta. In these negotiations, Angelo Gordon, Apollo, and Gamut were represented by PJT, and counsel from Paul, Weiss, Rifkind, Wharton & Garrison LLP. In these negotiations, Serta was represented by its financial advisor, Evercore, and its counsel from Weil Gotshal & Manges LLP. Through these negotiations, the parties explored possible transaction structures whereby Angelo Gordon, Apollo, and Gamut would provide additional new money loans and restructure their First Lien Term Loans, so as to reduce Serta's indebtedness and interest expense and enhance its liquidity.

20. On April 30, 2020, during the course of these negotiations, Apollo executed a non-disclosure agreement ("NDA") with Serta and Advent, along with a one-month restriction period to explore providing new money and liability management solutions to Serta. Serta acknowledged Apollo's loan holdings by countersigning the NDA, which referenced Apollo's \$192 million position, which included the assignments submitted to UBS on March 20, 2020.

21. These negotiations led to the creation of draft term sheets for a potential transaction, which were negotiated over a period from approximately May 3, 2020, through June 3, 2020. Certain draft term sheets that were circulated by Weil between May 20, 2020 and June 3, 2020 are attached as Exhibits 1–8 to this declaration (SSB\_ADVERSARY00270848; SSB\_ADVERSARY00270852; SSB\_ADVERSARY00270914; SSB\_ADVERSARY00270918; SSB\_ADVERSARY00271137; SSB\_ADVERSARY00271148; SSB\_ADVERSARY00271284; SSB\_ADVERSARY00271289).

22. To the best of my knowledge, at no point during these negotiations did Serta suggest that this transaction would not be permitted under the Credit Agreement or that it would require any amendment to the Credit Agreement.

23. On June 5, 2020, Serta abruptly ended the parties' negotiations, and the transaction that was being discussed was never completed.

24. Apollo was never invited to participate in the restructuring transaction that was ultimately completed and is the subject of this litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 16, 2023  
Los Angeles, California

  
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Theodore Kwon



# KWON EXHIBIT 1 – FILED UNDER SEAL

# KWON EXHIBIT 2 – FILED UNDER SEAL

# KWON EXHIBIT 3 – FILED UNDER SEAL

# KWON EXHIBIT 4 – FILED UNDER SEAL

# KWON EXHIBIT 5 – FILED UNDER SEAL

# KWON EXHIBIT 6 – FILED UNDER SEAL

KWON EXHIBIT 7 –  
FILED UNDER SEAL

KWON EXHIBIT 8 –  
FILED UNDER SEAL